



Federal Communications Commission  
Washington, D.C. 20554  
May 12, 2010

*In Reply Refer to:*  
1800B3-BSH/LAS

La Promesa Foundation  
c/o Dennis J. Kelly, Esq.  
P.O. Box 41177  
Washington, D.C. 20018

**Re: AM Broadcast Auction 84  
MX Group 84-39E**

New (AM), Fritch, Texas  
Facility ID No. 161537  
File No. BNP-20040130BKN

**Application for New AM Station  
Construction Permit**

Dear Applicant:

This letter is in reference to the above-captioned application for a new AM station at Fritch, Texas, filed by La Promesa Foundation ("LPF"). LPF's application was determined to be mutually exclusive with an application filed by Powell Meredith Communications Company ("Powell Meredith") for a new AM station at Sante Fe, New Mexico,<sup>1</sup> and an application filed by Gerald Benavides ("Benavides") for a new AM station at Panhandle, Texas.<sup>2</sup> These applications were designated MX Group 84-39E. As discussed below, following the dismissal of the Benavides application, we find a dispositive preference for LPF under Section 307(b) of the Communications Act of 1934, as amended<sup>3</sup> (the "Act"), and therefore direct LPF to file its long-form application within 60 days of the date of this letter for a construction permit in Fritch, Texas.

By letter dated January 22, 2010, the staff awarded Benavides a dispositive Section 307(b) preference under priority (3) of the applicable allotment priorities and directed Benavides to file a complete FCC Form 301 application within 60 days. In the letter the staff explicitly stated that failure to timely file the complete FCC Form 301 application would result in the dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute,<sup>4</sup> pursuant to Section 73.3568 of the Commission's Rules.<sup>5</sup> Benavides failed to file a complete FCC Form 301 within 60 days of the

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<sup>1</sup> File No. BNP-20040128ART.

<sup>2</sup> File No. BNP-20040129ABQ.

<sup>3</sup> 47 U.S.C. § 307(b).

<sup>4</sup> *Letter to Powell Meredith Communications Company, La Promesa Foundation, and Gerald Benavides*, Ref. 1800B3-BSH/LAS (Jan. 22, 2010).

<sup>5</sup> 47 C.F.R. § 73.3568.

January 22, 2010, letter, and for this reason, the tech box application was dismissed for failure to prosecute on April 14, 2010.<sup>6</sup>

As the remaining Powell Meredith and LPF applications propose new AM stations for different communities of license, we evaluate these applications under Section 307(b) of the Act. There are currently ten radio stations licensed to Santa Fe, New Mexico. Consequently, the Powell Meredith proposal would be considered under priority (4), other public interest matters. The LPF application proposes a first local transmission service and claims priority (3) under the applicable allotment priorities. Under well-settled policy, the establishment of a first local service under priority (3) is preferred to a priority (4) proposal. Therefore, we direct LPF to file a complete FCC Form 301 application.

Accordingly, IT IS ORDERED that LPF, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a construction permit for a new AM broadcast station at Fritch, Texas (File No. BNP-20040130BKN), pursuant to the procedures set forth in the Commission's Rules.<sup>7</sup> With its application, LPF must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. Applicants must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.<sup>8</sup> Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,<sup>9</sup> and must not create new application conflicts.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347*. When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing website at <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2831.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application, **on or before July 12, 2010**,

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<sup>6</sup> Letter to Gerald Benavides, Ref. 1800B3-BSH (April 14, 2010).

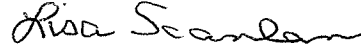
<sup>7</sup> See 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.


<sup>8</sup> See *id.* §§ 73.24, 73.37, and 73.182.

<sup>9</sup> *Id.* § 73.3571.

will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.<sup>10</sup>

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter H. Doyle".

Peter H. Doyle   
Chief, Audio Division  
Media Bureau

cc: Lee J. Peltzman, Esq.

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<sup>10</sup> *Id.* § 73.3568.